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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,506	02/04/2004	Yoshihiko Iijima	248528US0	1755
22850 7590 04/29/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER NGUYEN, SON T				
ART UNIT 3643		PAPER NUMBER		
NOTIFICATION DATE 04/29/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/770,506

**Applicant(s)**

IIJIMA ET AL.

**Examiner**

Son T. Nguyen

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 53-70 is/are pending in the application.
- 4a) Of the above claim(s) 57-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Newly submitted claims 57-70 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the inventions are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). For example, invention II, claims 57-70, is for stunting the growth of a young plant to make the plant into a dwarf plant with different composition than what is called for in invention I, claims 53-56, which is for regulating the growth of a young plant into adult size and not necessary decrease in size of the young plant into a dwarf plant.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 57-70 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 53-56** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al. (3157964) in view of Kohno et al. (5791084).

Ferguson et al. teach an aqueous solution comprising: various percentage amount of cinnamic acid (col. 3, line 25, depending on the intended plant type), various percentage amount of salts such as phosphate as listed in col. 7, lines 38-40, (depending on the intended plant type), and an aqueous medium such as water (see examples 1-11). In addition, since Ferguson et al. teach cinnamic acid, the cinnamic acid has the same chemical formula as claimed by Applicant because, as pointed out by Applicant, this chemical structure is well-known of cinnamic acid as provided by the Merch Index. However, Ferguson et al. are silent about the percentage amount of cinnamic acid being 0.5 to 25 wt.% of cinnamic acid, the salt being either sodium or potassium tripolyphosphate with percentage amount of 35 to 300 wt.% based on the weight of the cinnamic acid.

Kohno et al. teach using either sodium or potassium tripolyphosphate in a plant composition because of their low salt damage to the plant and their considerable effects in small amounts, thus, lower cost since only a small amount is employed (col. 2, lines 10-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ either sodium or potassium tripolyphosphate as taught by Kohno et al. in the solution of Ferguson in order to reduce salt damage to the plant and reduce cost due to the salts considerable effects in small amounts.

The percentage amounts for the cinnamic acid (0.5 to 25 wt.%) and salts such as either sodium or potassium tripolyphosphate (35 to 300 wt.% based on the weight of the

cinnamic acid) are not disclosed by Ferguson et al. and Kohno et al. However, it is believed that these percentages depend on the type of plants the solution is applied thereto. For example, Ferguson et al. include various amount of ingredients in the solution as explained in examples 1-11, depending on the use of the solution such as for evergreens, bare roots of dormant plants, lawns, etc. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ various percentages of cinnamic acid and sodium or potassium tripolyphosphate in the solution of Ferguson et al. as modified by Kohno et al., since it has been held that where routine testing and general experimental conditions (the type of plants being employed with the solution) are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 53-56 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/  
Primary Examiner, Art Unit 3643